

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x
:
UNITED STATES OF AMERICA
:
- v. -
:
GILBERTO VALLE, 12 Cr. 847 (PGG)
:
Defendant. :
- - - - -x

GOVERNMENT'S PROPOSED EXAMINATION
OF PROSPECTIVE JURORS

PREET BHARARA
United States Attorney
Southern District of New York
Attorney for the United States
of America

Hadassa Waxman
Randall W. Jackson
Assistant United States Attorneys
- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -	-x
	:
UNITED STATES OF AMERICA	:
- v. -	:
	: 12 Cr. 847 (PGG)
GILBERTO VALLE,	:
	:
Defendant.	:
- - - - -	-x

GOVERNMENT'S PROPOSED EXAMINATION
OF PROSPECTIVE JURORS

The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors. The Court is requested to pursue more detailed questioning at the sidebar or in the robing room if a prospective juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the prospective juror in favor of or against either the Government or the defendant¹.

¹ The Government does not believe that a questionnaire is necessary, but defers to the Court's wisdom as to whether the inclusion of any voir dire questions in a brief questionnaire would make jury selection more efficient. To the extent that the Court believes a questionnaire is appropriate, the Government believes that the questionnaire should likely be limited to questions regarding: (1) juror availability for the dates of the trial; and (2) whether any of the juror's exposure to press related to this case has so affected his or her view that he or she would be incapable of following the Court's instruction that he or she is required to render a fair and impartial verdict based on the evidence introduced at trial.

The Charges

1. This is a criminal case. The defendant is Gilberto Valle. The defendant has been charged in an Indictment with violating certain federal laws. The Indictment was filed by a grand jury sitting in this district, and it contains two counts.

2. The Indictment is not evidence itself. It simply contains the charges that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. I would like to summarize the charges in this case in order to determine whether there is anything about the nature of this case that may make it difficult or inappropriate for any of you to serve on the jury.

3. Count One charges that from in or about January 2012, up through and including on or about October 24, 2012, GILBERTO VALLE and others participated in a conspiracy to commit kidnapping. Count One alleges that (1) on or about July 9, 2012, as part of that conspiracy, VALLE communicated with another individual about the kidnapping, cooking and eating body parts of a particular woman; (2) on or about July 22, 2012, VALLE traveled to Maryland to meet with a potential kidnapping victims; and (3) on or about May 31, 2012, VALLE accessed a law enforcement database in connection with the kidnapping scheme. Count Two charges the defendant with accessing a Federal government computer database without authorization. Specifically, Count Two

charges that on or about May 31, 2012, VALLE accessed, without authorization and outside the scope of his authority, the National Crime Information ("NCIC") Database, and obtained information from a department or agency of the United States

4. Do any of you believe that you have personal knowledge of the events charged in the Indictment as I have described them?

Knowledge of the Trial Participants

5. The defendant in this case is Gilberto Valle. Do any of you know, or have you had any dealings, directly or indirectly, with the defendant, or with any relative, friend, or associate of the defendant?

6. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

7. Gilberto Valle is represented by Julia Gatto, Esq., and Christopher Flood, Esq. of the Federal Defenders of New York, Inc., whose office is located at 52 Duane Street, in New York, New York. *[Please ask counsel to stand when his or her name is called.]* Do any of you know Ms. Gatto? Do any of you know Mr. Flood? Have any of you had dealings, either directly or indirectly, with Ms. Gatto, Mr. Flood or the Federal Defenders of New York, Inc.?

8. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Preet

Bharara. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Hadassa Waxman and Randall Jackson. They will be assisted by a paralegal in that office, Darci Brady and by Special Agent Anthony Foto of the Federal Bureau of Investigation ("FBI"). *[Please ask counsel, the paralegal, and Special Agent to stand.]* Do any of you know Mr. Bharara, Ms. Waxman, Mr. Jackson, Ms. Brady, or Special Agent Foto? Have you had any dealings, either directly or indirectly, with any of these individuals?

Relevant Names and Locations

9. I will now read a list of names of individuals who may be mentioned during the trial, or who may be witnesses in this case:

[The Government will provide this information prior to jury selection pursuant to the Court's individual rules and practices.]

Do any of you know any of these people? Have you had any dealings, either directly or indirectly, with any of these individuals?

10. I will now let you know about some locations that may be mentioned or shown during the trial:

[The Government will provide this information prior to jury selection.]

Are any of you familiar with these locations?

Ability to Render Fair Verdict

11. As you can tell, during the trial, you will hear evidence concerning a violent crime, specifically, the crime of conspiracy to commit kidnapping. Would the nature of these crimes make it difficult for any of you to render a fair verdict? Do any of you feel that you could not decide such charges fairly and impartially?

Kidnapping

12. Has any juror been involved in an offense involving kidnapping? Has any juror's relative, close friend or associate been involved in an offense involving kidnapping? Has any juror, or any member of the juror's family, or any juror's close friend, had any experiences of any kind, directly or indirectly, with kidnapping?

13. Do any of you have an opinion about the authority or right of the Government to enforce the laws prohibiting kidnapping, or conspiracy to do the same, that would affect your ability to be fair and impartial in this type of case?

14. Do any of you feel, for any reason, that you could not view fairly and impartially a case involving federal kidnapping charges?

15. Do any of you have any opinion about the enforcement of federal laws generally that might prevent you from being fair and impartial in this case?

16. Has any juror formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be crimes?

Graphic Evidence

17. Some of the evidence that will be introduced will include images and testimony involving graphic descriptions of violence, including sexual violence and the abuse of children. Do any of you feel, for any reason, that you could not follow my instructions to fairly and impartially render a verdict in a case involving such graphic evidence?

Law Enforcement Personnel

18. The witnesses in this case will include law enforcement personnel, including agents of the FBI and members of the New York City Police Department ("NYPD"), among others. Would any juror be more likely to believe or disbelieve a witness merely because the witness is an FBI agent, a member of the NYPD, or other law enforcement officer?

Expert Witnesses

19. You also may hear testimony from expert witnesses. Have any of you had any experiences with experts, or do you have any general feelings about the use of experts, that would make it difficult for you to render a wholly fair and impartial verdict?

Persons Not On Trial

20. The defendant is charged with acting with others in committing certain of the alleged crimes. Those other

individuals are not on trial in this case. You may not draw any inference, favorable or unfavorable, towards the Government or the defendant from that fact. You also may not speculate as to the reason why other persons are not on trial at this time. Is there any juror who cannot follow this instruction or who for this reason would have difficulty rendering a fair and impartial verdict?

Searches

21. Some of the evidence admitted at trial may come from searches of, among other things, locations, computers, email accounts, and other facilities performed by law enforcement officers. I instruct you that those searches were legal and that the evidence obtained from those searches is admissible in this case. Do any of you have strong feelings about searches conducted by law enforcement officers or the use of evidence obtained from searches at trial?

Alternative Investigative Techniques Not Required

22. Does anyone have any expectations about the types of evidence that the Government might present in all criminal trials? Would any of you be unable to follow the judge's instructions that the Government is not required to use any particular technique when investigating and presenting evidence of a crime?

Relationship with Government

23. Do any of you know, or have any association - professional, business, or social, direct or indirect - with any member of the staff of the United States Attorney's Office for the Southern District of New York, the FBI, or the NYPD? Is any member of your family employed by any law enforcement agency, whether federal, state, or local?

24. Do any of you have any bias, prejudice, or other feelings for or against the United States Attorney's Office, the FBI, or the NYPD? Has any juror, either through any experience he or she has had or anything he or she has seen or read, developed any bias or prejudice for or against the United States Attorney's Office, the FBI, the NYPD, or any other law enforcement agency?

25. Have you, or has any member of your family, either as an individual, or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the Internal Revenue Service? Have any of you had any legal, financial, or other interest in any such legal action or dispute, or its outcome? In particular, have you, or has any member of your family, ever had a dispute concerning payment of money owed to you by the Government?

Prior Jury Service

26. Have you ever, at any time, served as a member of a grand jury, whether in federal, state, county, or city court? If so, when and where did you serve?

27. Have you ever served as a juror in any court? If so, when, and in what court did you serve, and was it a civil or criminal case? What was the nature of the case? Did the jury reach a verdict?

Experience as a Witness, Defendant, or Crime Victim

28. Have any of you, or any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a Congressional or state legislative committee, licensing authority, or governmental agency? Have you, or any of those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

29. Have you, or have any of your relatives or close friends, ever been a witness or a complainant in any hearing or trial, state or federal? Have you ever been a witness or a complainant in any federal or state prosecution?

30. Are you, or is any member of your family, or any close friend, now under subpoena or, to your knowledge, about to be subpoenaed in any criminal case?

31. Have you, or have any of your relatives or close friends, ever been the subject of any investigation or accusation

by any Grand Jury, federal or state, or by any Congressional Committee?

32. Have you, or has any member of your family, any associate, or close friend, ever been charged with a crime?

33. Have you, or any of your close friends or relatives, ever been a victim of a crime? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]*

34. Have you, or any of your close friends or relatives, ever been stopped or questioned by a member of the FBI, the NYPD or other law enforcement officer? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each incident and that prospective juror's reaction to how he or she was treated by the FBI, the NYPD, or other law enforcement agency.]*

Problems with Perception

35. Do any of you have problems with your hearing or vision that would prevent you from giving full attention to all of the evidence at this trial?

36. Are any of you taking any medication that would prevent you from giving full attention to all of the evidence at this trial?

37. Do any of you have any difficulty reading or understanding English in any degree?

Function of the Court and Jury

38. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finders. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not the defendants are guilty as charged in the Indictment, based on the law as I give it to you. Does any juror have any bias or prejudice that might prevent or hinder him or her from accepting the instructions of law that I will give you in this case?

39. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant is guilty or innocent?

40. Will each of you accept the proposition of law that sympathy must not enter into the deliberations of the jurors as to the guilt or innocence of the defendant, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of the defendant?

41. Do any of you have any legal training, or have any relative or close friend who is an attorney? If so, would this prevent you from applying the law in this case as stated by the Court? Will each of you accept my instruction that you are not to discuss this case with anyone, including attorneys you may know, until you are excused as jurors?

42. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established the defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

43. Does any juror have any religious, philosophical, or other belief that would make him or her unable to render a guilty verdict for reasons unrelated to the law or evidence?

44. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly, and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained to you?

Juror's Background

45. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's family status;
- b. the juror's occupation and educational background;
- c. the name and town or county of the juror's employer;
- d. the period of employment with that employer;
- e. the same information concerning other employment within the last five years;
- f. the same information with respect to the juror's spouse, any working children, and any working members of the juror's household;
- g. the area in which the juror resides, how long he or she has lived there, and, the same information (if applicable) for the past five years;
- h. what newspapers and magazines the juror reads and how often;
- i. what television shows the juror watches; and
- j. what else the juror does in his or her free time.

Requested Instruction Following Impaneling of the Jury

46. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and your friends. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk. In this regard, let me explain to you that the attorneys, the defendants, and the witnesses in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

47. In this connection, when the Court is in recess, please stay either in the jury room or somewhere outside the courtroom. Please do not wait in the courtroom.

Dated: New York, New York
January 14, 2012

Respectfully submitted,

PREET BHARARA
United States Attorney for
The Southern District of New York

By: /s/ Hadassa Waxman
Hadassa Waxman
Randall W. Jackson
Assistant United States Attorneys
Tel.: (212) 637-2277/1029

CERTIFICATE OF SERVICE

I, Hadassa Waxman, Assistant United States Attorney,
hereby certify that on January 14, 2012, I caused a copy of the
foregoing Government's Proposed Examination of Prospective Jurors
to be sent by electronic mail to:

Julia Gatto, Esq.
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, NY 10007
Julia.gatto@fd.org

/s/ Hadassa Waxman
Hadassa Waxman
Assistant United States Attorney
(212) 637-2277